

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 21, 2006

Division: County Attorney

Bulk Item: Yes xx No

Department: County Attorney

Staff Contact Person: Bob Shillinger x3470

AGENDA ITEM WORDING:

Approval of settlement agreement in matter of *James T. Bond & Merry Diamondstone v. Monroe County, et al*, 2006 CA 394 K.

ITEM BACKGROUND:

Mr. Bond and Ms. Diamondstone filed suit against the County seeking a judicial declaration that their downstairs enclosure was "legal". As part of a renovation project, their contractor enlarged their downstairs enclosure to a size larger than the permit allowed for. Subsequent to construction, the Board enacted an ordinance limiting downstairs enclosures to 299 square feet. After the law changed, the building department was unable to issue an after the fact permit for the downstairs even though an after the fact permit could have been issued if it had been applied for prior to the adoption of the 299 square foot rule. In short, the enclosure would have been lawful when it was built if the contractor had simply amended the permit or applied for an after the fact permit prior to the rule change. Growth Management staff has verified that the enclosure has only storage area.

The settlement agreement would ask the Court to declare the enclosure lawful and allow the owners to apply for permits in the future.

PREVIOUS RELEVANT BOCC ACTION: None

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval.

TOTAL COST: n/a

BUDGETED: Yes No

COST TO COUNTY: n/a

SOURCE OF FUNDS: n/a

REVENUE PRODUCING: Yes No xx

AMOUNT PER MONTH n/a **Year** n/a

APPROVED BY: County Atty xx OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:



SUZANNE A. HUTTON, COUNTY ATTORNEY

DOCUMENTATION: Included xx

Not Required **TO FOLLOW**

DISPOSITION: _____

AGENDA ITEM # _____

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA
LOWER KEYS CIVIL DIVISION – JUDGE JONES

JAMES T. BOND &
MERRY DIAMONDSTONE,

Plaintiffs,

Vs.

Case No.: 2006-CA-394-K

MONROE COUNTY,
A political subdivision of the State of Florida
MONROE COUNTY BUILDING DEPT.,
MONROE COUNTY CODE ENFORCEMENT DEPT.,

and

E.G. BRASWELL CONSTRUCTION, INC.,
A Florida Corporation,

Defendants.

DRAFT

SETTLEMENT AGREEMENT

The Plaintiffs James T. Bond and Merry Diamondstone (the “homeowners”) and the Defendants Monroe County, Monroe County Building Department, and Monroe County Code Enforcement Department (collectively “the County”) and Defendant E.G. Braswell Construction, Inc. (“Braswell”), hereby enter into this agreement to settle the above-styled matter under terms more fully set forth below:

WHEREAS, the Plaintiffs own property located at Lot 91 of the revised plat and amended plat of Sugarloaf Shores Section F, recorded in plat book 6, page 9, Monroe County, Florida; and which has a street address of 430 South Point Drive, Sugarloaf Key, Florida; (hereinafter referred to the “property”) and

WHEREAS on or about February 28, 2003, the Plaintiffs entered into a contract with Defendant Braswell to renovate and improve the home located on the property including the downstairs area; and

WHEREAS under its agreement with the Plaintiffs, the Defendant Braswell was charged with obtaining all necessary permits from the County to complete the renovation project; and

WHEREAS the initial project contemplated a downstairs area measuring 567 square feet; and

WHEREAS at the time the project was commenced, the County's regulations would have authorized the issuance of a permit for a downstairs enclosure measuring 567 square feet;

WHEREAS under permit number 03101208, the Defendant County Building Department authorized Defendant Braswell to complete the Plaintiffs downstairs enclosure measuring no more than 567 square feet; and

WHEREAS on June 7, 2003, the Plaintiffs and the Defendant Braswell modified its agreement to expand the Plaintiffs' downstairs enclosure to a size of approximately 945 square feet;

WHEREAS on October 15, 2003, the County amended its regulations at the direction of the Federal Emergency Management Agency to limit downstairs enclosures to no more than 299 square feet; see Ordinance 37-2003, § 2; and

WHEREAS due to a review by the Department of Community Affairs required by F.S. 380.05(6) and 380.0552(9), Ordinance 37-2003 did not become effective until April 9, 2004; and

WHEREAS Defendant Braswell commenced construction on the Plaintiffs' downstairs enclosure measuring 945 square feet in June of 2003; and

WHEREAS the as built downstairs enclosure contains only storage area and no habitation area as defined under the County Code;

WHEREAS the downstairs enclosure in its as built condition of storage area measuring 945 square feet would have been lawful had it been permitted prior to the effective date of Ordinance 37-2003;

WHEREAS after the enactment of Ordinance 37-2003, the County's regulations would not authorize the issuance of an after-the-fact permit for the downstairs enclosure with its as-built dimensions; and

WHEREAS because the downstairs enclosure, as built, exceeds the scope of permit 03101208, the County's code enforcement department initiated an administrative enforcement proceeding against the homeowners, case number CE05-060090; and

WHEREAS the owners took no action to conceal the unpermitted construction and instead acted in good faith throughout the course of construction; and

WHEREAS the plaintiffs felt compelled by the circumstances set forth above to file this action for a declaratory judgment to clarify their rights under the County Code and their permit issued pursuant to that code; and

WHEREAS the County is satisfied that, other than the dimensions, the Defendant Braswell built the Plaintiffs' downstairs enclosure to meet all current applicable building and safety codes; and

WHEREAS the parties desire to resolve their differences amicably and buy peace in the matter; and

WHEREAS the parties intend this agreement to be binding on their respective heirs, successors, and/or assigns;

NOW, THEREFORE, the parties agree as follows:

1. The Court shall enter a judgment declaring that, notwithstanding Monroe County Ordinance 37-2003, § 2¹ the Plaintiffs' downstairs enclosure at the subject property is a lawfully established, nonconforming structure;
2. The Plaintiffs shall be able to utilize for limited storage the 945 square foot downstairs enclosure in its current footprint as if permit number 03101208 had correctly reflect the enclosure's dimensions as-built;
3. Defendant Monroe County shall, within 10 days of entry of the judgment by the Court, dismiss with prejudice Code Enforcement case number CE05-060090 and shall not initiate any further administrative, civil, or criminal action against the Plaintiffs, their heirs, successors, or assigns, regarding the downstairs enclosure provided that the Plaintiffs do not seek to unlawfully expand or utilize that downstairs enclosure;
4. Provided there are no unlawful alterations in use of the Plaintiffs' downstairs enclosure as a limited storage area nor changes in size or configuration to the downstairs enclosure, the Defendant Monroe County shall not deny the Plaintiffs, their heirs, successors, and/or assigns, any building permits for the property to which the Plaintiffs, their heirs, successors, and/or assigns, are lawfully entitled;
5. Within 10 days of the entry of the judgment of the Court, Defendant Braswell shall pay to the County the sum of \$1,000.00 dollars to reflect

¹ As codified at Monroe County Code § 9.5-317(b)(1)(i).

the after the fact permit fees that should have been paid to the County as a result of the additional construction;

6. This agreement and the agreed upon judgment shall be filed in the official records of Monroe County so as to put all including all potential heirs, successors, or assigns on notice of the intentions of the parties and the judgment of the Court;
7. Except as specifically set forth herein, the parties agree to bear their own costs and attorney's fees.
8. In consideration of the promises made herein and for other good and valuable consideration, the Plaintiffs, individually and jointly, and the County agree to release each other from any claim or cause of action of any type that was raised or capable of being raised as a result of the facts underlying this action.
9. This Court shall retain jurisdiction over this matter to enforce the terms of this settlement agreement and its judgment.
10. This written settlement agreement represents the entire agreement of the parties.
11. Each party warrants that he, she, or it has had an opportunity to consult with counsel prior to entering into this settlement agreement.
12. By entering into this Agreement, the parties are not acknowledging the merits or lack of merits of these proceedings. Rather, the parties are entering into this Agreement for the purpose of avoiding further expense and delay inherent in litigation of this nature.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

DRAFT

Notary Public

James T. Bond, Plaintiff (date)

Notary Public

Merry Diamondstone, Plaintiff (date)

For Defendant
E.G. Braswell Construction, Inc.

Notary Public

Edgar G. Braswell, President (date)

Danny L. Kolhage
County Clerk

For Defendant Monroe County

By: _____
Deputy Clerk

Charles "Sonny" McCoy, Mayor

(date)

DRAFT

For Defendant Monroe County
Building Department

DRAFT

Notary Public

Joe Paskalik, Building Official (date)

For Defendant Monroe County
Code Enforcement Department

Notary Public

Ronda Norman, Director (date)